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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1047 109

SAMUEL ZIMBERG AND MAX GOLDBERG,
Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

THOMAS H. MAHONY,
JOHN I. ROBINSON,
Counsel for Petitioners.

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This is a petition for a writ of certiorari to review the final judgment of the Circuit Court of Appeals entered April 24, 1944 (R. 124), affirming the judgment of the District Court for the District of Massachusetts entered on June 16, 1943 against the defendants, these petitioners (R. 18-19).

Statement of the Matter Involved.

The indictment (R. 1) charges the petitioners with violations of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended, by selling and delivering wholesale cuts of beef at prices higher than the maximum prices as determined under Revised Maximum Price Regulation No.

169, as amended. The petitioners were originally indicted in ten counts, but during the trial that followed the Court directed the jury to return verdicts of not guilty as to the petitioner Goldberg on all counts, except 2 and 4, and verdicts of not guilty as to the petitioner Zimberg on all counts except 2, 4, 5, 8, 9, and 10. The jury found Goldberg guilty as charged in counts 2 and 4, and Zimberg not guilty as charged in those counts, but guilty as charged in counts 5, 8, 9 and 10. During the trial various exceptions were saved to the exclusions or admission or refusal to strike out evidence; to the failure to give requested instructions to the jury and to the giving of allegedly erroneous instructions. The petitioners presented written motions for directed verdicts, which were denied subject to exceptions.

The Circuit Court of Appeals unanimously affirmed the judgment of the District Court with reference to both petitioners, finding that there was no error in the exceptions taken by the petitioners during the course of the trial.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on April 24, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended 28 U. S. C., Section 347(a).

Questions Presented.

For the purposes of prevailing upon the Court to allow the writ of certiorari, the petitioners raise only the questions which the Circuit Court of Appeals spent much time in the discussion of the petitioners' exceptions.

1. The Government failed to sustain the burden of proof with reference to counts 2 and 4, on which Goldberg was found guilty. The trial Court erred in admitting the Gov-

ernment's sole witness to state the price charged for the beef.

2. The jury's verdicts of not guilty for Zimberg with reference to counts 2 and 4, and guilty for Goldberg with reference to the same counts, are inconsistent and, as a matter of law, Goldberg should be given a new trial.

3. The trial Court committed reversible error when it neglected to instruct the jury to disregard certain prejudicial testimony of the Government's sole witness which, in the jury's absence from the courtroom, had been ordered stricken from the record—Counts 2 and 4.

4. The Government failed to sustain the burden of proof by failing to show the price charged for the beef, a necessary element in its case against Zimberg in Count 5.

5. The trial Court erred in admitting the ledger sheets against Zimberg in Counts 8, 9 and 10.

Reasons for Granting the Writ.

It is submitted that the questions presented above are questions which raise substantial problems of law in criminal cases, which should be determined by this Court.

Wherefore the petitioners respectfully pray that their consolidated petition for a writ of certiorari be granted.

THOMAS H. MAHONY,
JOHN I. ROBINSON,
Attorneys for Petitioners.